

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015080311

ORDER GRANTING MOTION TO
DISMISS

On August 4, 2015, Student filed a Request for Due Process Hearing (complaint) naming the Newport-Mesa Unified School District. The complaint contains two issues. In Issue Two, Student alleges that that Newport-Mesa's actions denied Student his rights under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the California Unruh Civil Rights Act.

On August 14, 2015, Newport-Mesa filed a Motion to Dismiss Issue Two, alleging that the Office of Administrative Hearings is without jurisdiction to hear that issue.

OAH received no response to the District's motion.

APPLICABLE LAW AND DISCUSSION

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Thus, OAH does not have jurisdiction to entertain claims based on Section 504 (29 U.S.C. §§ 701 et. Seq.), the ADA (42 U.S.C. §§ 1207 et. Seq.), or the Unruh Act (Civil Code, § 501)..

Here, Issue Two is not within OAH's jurisdiction.

ORDER

District's Motion to Dismiss Issue Two is GRANTED. The matter will proceed as scheduled as to Issue One only.

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IT IS SO ORDERED.

DATE: August 21, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings